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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/815,472 | 03/23/2001 | David A. Goodmanson | 8893-000003 | 6519 |

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EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1761 | 3 |

DATE MAILED: 06/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|---|--------------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 09/815,472 | Applicant(s) Goodmanson | |
| | Examiner Lien Tran | Art Unit 1761 | |
| -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -- | | | |
| Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. | | | |
| <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). | | | |
| Status <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Mar 23, 2001</u></p> <p>2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p> | | | |
| Disposition of Claims <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-26</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) <u>19-26</u> is/are withdrawn from consideration.</p> <p>5) <input checked="" type="checkbox"/> Claim(s) <u>1-13</u> is/are allowed.</p> <p>6) <input checked="" type="checkbox"/> Claim(s) <u>14-18</u> is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.</p> | | | |
| Application Papers <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p> | | | |
| Priority under 35 U.S.C. §§ 119 and 120 <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). | | | |
| <p>*See the attached detailed Office action for a list of the certified copies not received.</p> <p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p> | | | |
| Attachment(s) <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>2</u></p> <p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> | | | |

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-18, drawn to a method of using rework dough, classified in class 426, subclass 549.
- II. Claims 19-22, drawn to the apparatus, classified in class 99, subclass 348.
- III. Claims 23-26, drawn to the batter, classified in class 426, subclass 94.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another materially different apparatus such as a mixing bowl and by hand; the process does not require the particular features of the apparatus.

3. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process such as trimming the dough and adding it to fresh ingredients. The product does not need the particular steps of the process.

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4. Inventions II and III are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case, the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making different product such as confection.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the search required for Group I is not required for Group II &III, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with David McClaughry on May 30 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, the term "reprocessed dough batter" is confusing; dough and batter are two different things. Is this a batter or dough; how can something be both a batter and a dough?

In claim 3, the term "reprocessed dough batter" has the same problem as claim 1. Also, the claim is not consistent with the previous claim because claim 1 recites adding to a new batch of batter and claim 3 recites adding to a new batch of dough. Are there two different embodiments claimed?

In claims 4-5, "said hot water" does not have antecedent basis.

Claim 7 is vague and indefinite. What does applicant mean by the enzyme is L-cystine? Cystine is not an enzyme; it is an amino acid.

In claim 9, the use of the word "preferably" is unclear because it is not known what is intended by it.

Claim 12 has the same problem as claim 9.

In claim 13, the term "reprocessed dough batter" has the same problem as claim 1. Also, it is suggested applicant be consistent with the terminology because in one claim the term reprocessed batter is used and in another the term reprocessed dough batter is used.

Claim 15 has the same problem as claim 7.

Claims 17-18 have the same problem as claim 9.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silva in view of Domingues.

Silva discloses a fermentation aid which comprises flour and sugar. Additional ingredients such as sugar, enzyme, dextrose, corn syrup etc... can be added. (See columns 3 and 7)

The fermentation aid is equivalent to the claimed catalyst because it enhances fermentation which is what a catalyst does. Silva does not disclose adding wheat gluten and the amounts claimed.

Domingues teaches wheat gluten is commonly added to dough product to achieve desired texture or taste (see column 8 lines 38-45).

It would have been obvious to one skilled in the art to add wheat gluten to the Silva fermentation aid because Silva teaches any ingredient commonly employed in making dough

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product can be added and Domingues teaches wheat gluten is commonly added to dough product. As to the amounts, it would have been obvious to vary the amounts depending on the type dough product. One skilled in the art can readily determine this parameter through routine experimentation. It would also have been obvious to use any kind of enzyme in absence of showing of unexpected result or criticality.

11. Claims 1-13 are free of prior art because there is no disclosure of a method comprising the steps as claimed.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Felske et al disclose a method of producing frozen dough.

Lothes discloses a method for preparing dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 31, 2002


LIEN TRAN
PRIMARY EXAMINER
